

Notice of Allowability

Application No.

10/822,830

Examiner

Evelyn A. Lester

Applicant(s)

KASTALSKY, ALEXANDER

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to election filed on 10-18-05.
2. ☒ The allowed claim(s) is/are 1-26.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


EVELYN LESTER
PRIMARY EXAMINER

Election/Restrictions

1. Applicant's election without traverse of Group I (claims 1-10 and 12-26 in the reply filed on 10-18-05 is acknowledged.
2. Claim 11 was initially withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Election was made **without** traverse in the reply filed on 10-18-05. However:
3. Claims 1-10 and 12-26 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claim 11, directed to the process of making or using an allowable product, previously (as noted above) withdrawn from consideration as a result of a restriction requirement, claim 11 is hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement as set forth in the Office action mailed on 10-3-05 is hereby withdrawn. In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claims including all the limitations of an allowable product claim or rejoined process claim are presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C.

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121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

REASONS FOR ALLOWANCE

4. The following is an examiner's statement of reasons for allowance:

The prior art does not show or fairly suggest the claimed invention of a two-electrode and a three-electrode optical electromechanical shutter having the claimed structure and claimed limitations, wherein a rejection under 35 USC 102 or 103 would be improper. Please particularly note the combination of claimed elements and claimed limitations, especially including, as recited in both independent claims (claims 1 and 12), that the membrane originally rests on four pillars above a substrate, as well as the configuration and claimed elements which comprise the membrane, such as: a first conducting electrode facing the substrate and attached to two pillars of the four indicated through torsion hinges made from the same material as the conducting electrode, the first conducting electrode, or a first piece of the first conducting electrode (claim 12), being placed at the membrane edge in the shape of a stripe parallel to the membrane edge and has the width equal or less than the depth of the air gap existing between the substrate and the membrane, so that the membrane is capable of rotating around the torsion hinges and reach a position normal the substrate plane surface, with a layer of insulator above the conducting electrode and a top layer on the insulator.

Therefore, the claimed invention is considered to be in condition for allowance as being novel and nonobvious over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Information Disclosure Statement

5. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

6. The drawings received on 7-6-04 are approved.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following are U.S. Patents directed to various configurations of optical electromechanical devices, such as shutters:

Kiang et al
Lin

U.S. Patent 5,867,297
U.S. Patent 5,960,132


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Hoehn	U.S. Patent 6,215,222 B1
Wood et al	U.S. Patent 6,396,975 B1
Sun et al	U.S. Patent 6,532,093 B2
Goldstein et al	U.S. Patent 6,606,428 B2
Fan	U.S. Patent 6,556,741 B1
Little et al	U.S. Patent 6,639,572 B1
Wood et al	U.S. Patent 6,757,093 B2
Behin et al	U.S. Patent 6,788,520 B1
Miller et al	U.S. Patent 6,847,152 B2

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evelyn A. Lester whose telephone number is (571) 272-2332. The examiner can normally be reached on M-F, subject to an increased flex schedule..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Evelyn A. Lester
Primary Examiner
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